

8.4.58

The Gazette of India



EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 52] NEW DELHI, THURSDAY, APRIL 3, 1958/CHAITRA 13, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 28th March 1958/7th Chaitra 1880 (Saka)

S.O. 451.—In continuation of the Election Commission's notification No. 82/92/57, dated the 30th September, 1957/8th Asvina, 1879 Saka, published in the Gazette of India Extraordinary, Part II, Section 3(ii), dated the 11th October, 1957 under section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment of the High Court of Judicature at Madras delivered by it on 24th January, 1958, on the appeal filed before that Court by Shri V. Munuswamy.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Friday, the twenty-fourth day of January, One thousand nine hundred and fifty-eight.

PRESENT:

The Honourable Mr. P. Rajagopalan, the Officiating Chief Justice and
The Honourable Mr. Justice Ganapatia Pillai.

APPEAL AGAINST ORDER NO. 303 OF 1957

V. Munuswamy—Appellant (Petitioner).

Versus

1. Shri N. P. Shanmugham.
2. V. R. Nagarajan.
3. V. Gopala Gounder.
4. M. V. Natesan—Respondents (Respondents).

Appeal against the order of the court of the Election Tribunal (District and Sessions Judge), Chingleput, dated 31st August 1957 and made in O.P. No. 8 of 1957.

This appeal coming for hearing on Thursday, 16th January 1958 and having stood over for consideration till this day, the Court delivered the following:—

JUDGMENT

(Judgment of Court delivered by Ganapatia Pillai J.)

This appeal is preferred under S. 116-A of the Representation of the People Act, 1951, against the order of the learned District Judge of Chingleput, functioning as an Election Tribunal dismissing O.P. No. 8 of 1957 on his file. The appellant who was the petitioner in the above proceeding before the Election Tribunal challenged the election of the first respondent before us, who was also the first respondent before the Election Tribunal, to the Lok Sabha of the Parliament

from the Tindivanam Single-member constituency of South Arcot District. The first respondent who secured a majority of more than 8,000 votes over the petitioner was declared elected. Besides the appellant and the first respondent, three other candidates were validly nominated, and they are respondents 2, 3 and 4 before the Election Tribunal. Of them, respondents 3 and 4 withdrew from the contest, and the second respondent who contested the election secured a lesser number of votes than the appellant himself, the poll having been held on 1st March 1957.

Two main grounds were put forward in the election petition for impugning the election of the first respondent. The first was that, by reason of the propaganda carried on by the first respondent by way of oral representations made to several voters of the constituency, he had defamed the moral character of the appellant, and that, as part of this propaganda the first respondent and his agent, one B. M. Swami of Madras, distributed to the voters leaflets similar to the leaflet marked Ex. A1 before the Election Tribunal. It was contended that the allegations contained in this leaflet were entirely untrue and that the propaganda carried on by the first respondent constituted a corrupt practice falling under clause 4 of S. 123 of the Representation of the People Act, 1951. The second ground of attack was that the first respondent and his agents carried on a systematic appeal to the voters to refrain from voting for the appellant by appealing to them on the ground of the caste of the appellant. The allegation said to have been made is that the appellant was falsely claiming to belong to the Vanniya Caste, while, as a matter of fact, he belonged to the so-called criminal tribe of Koravas. It is common ground that a large percentage of the voters of the constituency in question belong to the Vanniya caste. The learned Judge found that there was no acceptable proof of the oral propaganda alleged to have been carried on by the first respondent based upon the allegations found in Ex. A1, though he considered that its publication and distribution among the voters on the eve of the election had been fairly established. He also found that it was not established that either the first respondent or his agents made any systematic appeal to the electorate on the ground of caste; and consequently, he dismissed the election petition.

Three issues were framed by the learned Judge which cover these two allegations. Issue 1 which covers the publication of Ex. A1 runs as follows:—

“Whether the first respondent or any other person with his connivance or that of his agent published or caused to be published Ex. A1 filed by the petitioner.”

Issue 1(a) which relates to the same topic, but concerns itself with the oral propaganda alleged to have been carried on by the first respondent and his agents based upon the allegations contained in Ex. A1, runs as under:—

“Whether the first respondent has committed a corrupt practice within the meaning of S. 123(iv) of the Representation of the People Act, 1951, by making the allegations against the petitioner as stated in paragraphs 7 and 8 of the petition.”

The next topic or ground of attack is covered by Issue 2, which is in the following terms:—

“Whether the first respondent or any other person with his connivance or that of his agent systematically appealed to any person to vote or refrain from voting on the ground of community alone?”

Fifteen witnesses are mentioned in Schedule A appended to the petition as some of the persons to whom the first respondent made oral statements defamatory of the appellant. Eleven witnesses are mentioned in Schedule B of the petition as persons, to whom leaflets like Ex. A1 were distributed on the eve of the election. This classification of witnesses has not been adhered to during the trial, because we find that some witnesses who were put down in Schedule B for speaking to receipt of the pamphlet, Ex. A1, have also spoken to the oral representations alleged to have been made by the first respondent. However, that he would discuss the evidence separately under two heads, as was done by the learned Judge,—the first relating to the oral representations alleged to have been made by the first respondent defaming the character of the appellant and the second relating to the printing and distribution of pamphlets similar to Ex. A1 by the first respondent or by his agents.

The case of the appellant as regards the alleged oral statements is contained in paragraphs 7 to 11 of the petition. The gist of these paragraphs is that the first respondent told various persons who were voters of the constituency that the appellant was a drunkard, that he had cheated some persons in Madras for

starting a printing press called the Tirukkural Press, that he had misappropriated several thousands of rupees belonging to this concern, and that he had further started a firm of engineering contractors, from the funds of which he had misappropriated a sum of Rs. 10,065. It was further alleged that the appellant was born in a low caste and not in the Vannia caste as he claimed, and that the two brothers of the appellant were police constables who had been dismissed from service. No attempt was made to justify the truth of any of these accusations, as indeed it seems to have been conceded before the learned Judge that the accusations were untrue.

Before discussing the evidence relating to this matter, we may point out that there was no allegation in any paragraph of the election petition that the petitioner (the appellant) had any personal knowledge of the first respondent himself making these representations to the voters of the constituency. One criticism of the approach of the learned Judge in appreciating the evidence on this point is that he made a mistake in assuming that the particulars given both in the body of the petition and in Schedule A, lacked precision as regards the time and place where such representations were made. It was pointed out by Mr. S. Mohan Kumaramangalam, the learned counsel for the appellant, that the learned Judge was in error in assuming that witnesses Nos. 7, 8 and 9 mentioned in Schedule A were not residents of the Constituency, merely because in the address given for them in Schedule A, the town of Villupuram figures. It is explained to us by the learned counsel that the postal address of these witnesses mentioned villages situated within the constituency and that Villupuram was mentioned only as the route through which postal articles are directed to those villages. We are satisfied that this explanation is correct, and that the learned Judge committed an error in assuming that these witnesses, namely, P.Ws. 4, 7, 8 and 9 in Schedule A, are persons resident outside the constituency. However, this fact does not, in our opinion, vitiate the appreciation of the oral evidence of all witness examined before the learned Judge on this point, because, of these witnesses, only Nos. 4 and 9 in Schedule A have been examined as P.Ws. 12 and 11 before the learned Judge. It is also argued that the first respondent was not taken by surprise by the non-mention of particulars regarding places where the corrupt practice of oral representation took place, because it was said that the first respondent did not call for particulars if, as a matter of fact, the information containing the address of these witness in Schedule A was misleading. It is true that, in paragraph 4 of the counter statement, there was no specific denial of the places mentioned in Schedule A as the places where this corrupt practice took place. However in view of the abundance of oral evidence on this point placed before the learned Judge, nothing material turns upon the observation of the learned Judge that some of the witnesses mentioned in Schedule A to the petition were not residents of the constituency.

Coming to the witnesses themselves, P.W. 8, is claimed to be an important person in this group. He is the village Munsif of Peramandur. The substance of his evidence was that the first respondent met him three days prior to the date of the poll and requested him, in the company of four or five other persons, to canvass votes for him. In reply, P.W. 8 is said to have informed the first respondent that the villagers appeared to be generally in favour of the petitioner, whereupon the first respondent is reported to have told him that the petitioner was a Korava by caste and a dishonest man. The first respondent reinforced this argument by handing over to P.W. 8, pamphlets similar to Ex. A1 and requested him to distribute these pamphlets among the voters of his village. A sheet of these pamphlets was carried by one E. M. Swami (not examined before the learned Judge) was accompanied the first respondent to the house of P.W. 8 on the occasion of this visit. The manner in which the appellant came to know of this incident is spoken to by P.W. 8 himself about 40 days before he gave evidence before the learned Judge, he stated he had come to the tailoring shop at Tindivanam of one Purushotam, where the petitioner met him and he mentioned to him then the incident of the meeting with the first respondent. In the counter statement filed by the first respondent, he totally denied that he met P.W. 8 in Peramandur. But, in cross-examination, he had to admit that that he met P.W. 8 on the eve of the election, though he added that the meeting took place near a temple in the village and not in the house of P.W. 8. It was pointed out by the learned counsel for the appellant that this circumstances was not averted to by the learned Judge in appreciating the evidence of P.W. 8. P.W. 6 was examined by the first respondent as a person who was present

when the first respondent met P.W. 8 in Peramandur. Of course, the version of R.W. 6 is that the meeting took place near a temple and not in the house of P.W. 8. Giving due allowance for this circumstances, we are unable to differ from the learned Judge in his opinion regarding the value to be attached to the evidence of P.W. 8. It is true that R.W. 6 was not cited originally as a witness by the first respondent and he was called only as an additional witness. He and R.W. 5 and one Jengal Reddiar, who was a candidate for the State Assembly from the Gingee constituency (which was one of the areas within the Tindivanam Parliamentary Constituency), according to their version, accompanied the first respondent on the occasion of his visit to the village of P.W. 8. The time of this visit was, according to them, 10 days before the election, whereas, according to P.W. 8, the visit took place three days prior to the poll, which was held on 1st March, 1957. The version of R.W. 6 and R.W. 5 is that, on being approached by the first respondent with a request to canvass votes for him, P.W. 8, merely said "All right". They impliedly denied the evidence of P.W. 8 that he told the first respondent that the villagers appeared to be generally in his favour and that the first respondent told P.W. 8 that the appellant petitioner was a Kurava by caste and a dishonest man. They further denied that the first respondent handed over pamphlets similar to Ex. A1 to P.W. 8 for distribution. It is true that R.W. 5 is a relation of one Venkatakrishna Reddiar, the founder of the C.R.C. Party, which put up the first respondent as its candidate for the Tindivanam constituency. But, as pointed out by the learned Judge, R.W. 5 was not a member of that party. In this matter, he is corroborated by R.W. 5 is a man of substance, owning property worth Rs. 50,000. The criticism of the learned Judge that there was no specific allegation in the petition that any corrupt practice was committed at Peramandur may not be strictly correct, because the address of P.W. 8 who figures in both Schedule A and Schedule B to the petition, is given as Peramandur. But the point made by the learned Judge that the date of this corrupt practice as given in the Schedules, namely, 24th February, 1957 does not correspond to the date of the visit of the first respondent to his village, as spoken to by P.W. 8, cannot be brushed aside. Of course, villagers like P.W. 8 cannot be expected to remember with any degree of certainly the dates of visits of candidates to their village. But this does not explain how the appellant put down 24th February, 1957 as the date of the visit of, as a matter of fact, P.W. 8 and told him that the visit took place three days prior to the election. The difference in dates may not be very material; but, still, when particulars are given of the date of a corrupt practice in an election petition, we would expect a high degree of accuracy. After all, the learned Judge had the advantage of seeing the witnesses give evidence; and sitting as a Court of Appeal, we are not satisfied that there are any compelling reasons which should induce us to take a view of the oral evidence of P.W. 8 different from that which appealed to the learned Judge.

The next important witnesses on this point is P.W. 12 who is a resident of Chinnambaboo Samudram. He is a Harijan and his evidence is that, 5 or 6 days before the polling date, the first respondent along with two or three others came to his village in a car and told him that the petitioner was a dishonest man and had misappropriated monies and that the villagers ought not to vote for him. He further said that the first respondent handed over to him a pamphlet similar to Ex. A1, as was rightly pointed out by the learned Judge, this witness was not interested in the caste of the petitioner because he was himself a Vannia. Again, his name was not included in Schedule B to the petition as a person who had received a pamphlet like Ex. A1. There is no explanation why his name was omitted from schedule B, because, according to P.W. 12, he met the petitioner 10 days after the result of the election was announced and told him all he knew about the incident relating to the visit of the first respondent to his village. The first respondent denied that he ever went to Chinnambaboo Samudram or met this witness. It is true that this witness who is number four in Schedule A to the petition was taken by the learned Judge to be a resident outside the constituency. It is also true that Schedule B contains names of witnesses who received pamphlets like Ex. A1, through post. However, as pointed out by the learned Judge, there is circumstance that while the date of the visit of the first respondent to Chinnambaboo Samudram is mentioned in Schedule A as 20th February, 1957, the version of the witness is that the visit took place five or six days before the date of poll. Further, there is the significant omission in the petition that any oral representation was made to the witnesses at Chinnambaboo Samudram on the date of the visit of the first respondent to that village, for these reasons, we are not prepared to differ from the learned Judge in his conclusion that the evidence of this witness is not acceptable.

P.W. 3 stated in his evidence that the B. M. Swami came to him just before the election and repeated to him by word of mouth the allegations contained in Ex. A1. His evidence deserves no serious consideration, because he was not mentioned in the petition as a person to whom any oral representation had been made.

P.W. 14 is another witness in this group who remains to be noticed. According to his evidence, the first respondent came to this village three days prior to the polling date and distributed pamphlets like Ex. A1 and talked to persons who gathered round his car, informing them that the petitioner was not a Vannia, but was a Kurava by caste. About 40 or 50 persons of that village are said to have listened to this talk. None of them was however called to corroborate P.W. 14. As regards this witness also, the learned Judge pointed out that Chendur was not mentioned in the petition as one of the place where the oral representation had been made and that the date of the visit or R.W. 1 to this village as given in the petition namely, 22nd February, 1957, did not tally with the evidence of P.W. 14. P.W. 14 is an illiterate witness and his claim to recognise Ex. A1 as a pamphlet similar to the one distributed by the first respondent in his village was rightly disregarded by the learned Judge, because it was merely based upon the size and formation of the matter printed in the pamphlet. It is pointed out by the learned Judge that the appellant-petitioner secured 339 votes in this village, while the first respondent secured only 61 votes and the second respondent secured 51 votes. This circumstance is relied upon by the learned Judge to show that the version of P.W. 14 as to what he informed the petitioner when he met him 10 days after the result of the election was announced in Tindivanam could not be true. According to P.W. 14 he is said to have informed the petitioner that the people in his village had become confused and divided on perusing the pamphlets distributed by the first respondent and after listening to the talk which the first respondent had with 40 or 50 of the villagers. As a matter of fact, this opinion of this witness is found to be not based on facts, having regard to the number of votes secured by the appellant in this village. Even otherwise, the status of P.W. 14 is such that it does not inspire any confidence that he was a disinterested man coming forward to speak to matters within his personal knowledge.

The only other evidence in connection with this corrupt practice which remains to be considered is that of the petitioner himself. According to him, when he went to the villages of Mylam, Veedoor, Padiarapuliur, and neighbouring villages two or three days prior to the election, he himself heard the first respondent speak to the villagers in these villages referring to the appellant as belonging to the Kurava Community. As was pointed out by the learned Judge, none of the persons belonging to these villages has been cited as a witness to prove this allegation. Indeed, there is no reference at all in the petition that the first respondent himself made any speeches in which he referred to the community of the appellant as the Kurava community. For these reasons in our opinion, the learned Judge was right in rejecting the evidence tendered by the appellant in proof of the alleged corrupt practice falling under S. 123(3).

The next question for consideration is the corrupt practice alleged to have been committed by the first respondent by the publication and distribution, either by himself or through his agents, of pamphlets similar to Ex. A1. A number of witnesses have been examined to speak to the distribution of such pamphlets. They are P.Ws. 1, 2, 8, 10, 11, 13 and 14. Paragraphs 12 and 13 of the petition contain the plea of the appellant in regard to this matter. It is significant that though, during the evidence, a number of other villages were also mentioned as the places where B. M. Swami and other agents of the first respondent distributed such pamphlets, Nagalapuram hallet of Tindivanam Town alone was mentioned in paragraphs 12 and 13 of the petition as the place of distribution. Again, while in the evidence a number of other persons were referred to as the agents of the first respondent who took part in such distribution in paragraphs 12 and 13 of the petition none except B. M. Swami is referred to as the agent of the first respondent responsible for such distribution. In fact, though there is no specific allegation in the petition that the first respondent himself distributed such pamphlets, an attempt was made during the examination of witnesses to put forward such a case.

Before examining the evidence of these witnesses we may point out that we agree with the learned Judge that the pamphlet is directed against the appellant and that such pamphlets were published and distributed before the

date of poll in the constituency, though not in the manner stated by the appellant and his witnesses. Of course, Ex-A1. is non-committal, because it does not exhort the voters to vote for any particular candidate. But it is conceded even by the learned counsel for the first respondent that it is mainly directed against the appellant. In the absence of any proof of the authorship of the pamphlet,—of the person who got it printed—no inference can be drawn from a mere circulation of the pamphlet that the first respondent was responsible for such circulation.

Among the numerous witnesses examined on this point, only P.W.s. 8, 10, 11 and 14 connect the first respondent directly with such circulation. We have already discussed the evidence of P.W. 8 and we have indicated that we agree with the learned Judge in rejecting his evidence. P.W. 11, who is a resident of Periathachoor, says that, three days prior to the polling date, the first respondent came to his village and distributed pamphlets similar to Ex-A1. He claimed to have worked as the agents of the first respondent in the Periathachoor booth. It is difficult to accept this claim, because he admits that his father-in-law is a distant pangali of the appellant. His statement quoted by the learned Judge in paragraph 42 of his order to the following effect does not put the matter beyond doubt: "I am sure I could not have been an agent for the petitioner. I may have been agent for the first respondent". In fact, it was suggested to him that one Shanmugham, son of Sadasiva Gounder, was the polling agent for the first respondent in Periathachoor booth. It is true that Shanmugham was not examined as a witness on the side of the first respondent. But one cannot expect evidence to contradict every suggestion of interest in a witness examined on the side of the appellant. Though P.W. 11 attempted to assert that he was sure that he was not the agent for the petitioner, his answer in cross-examination that he was asked by one Doraiswami Gounder, President of the Panchayat Board, to work as a polling agent and that he could not be sure for whom he worked without looking into the list which Doraiswami Gounder maintained, makes it reasonably clear that his assurance on this point is not well-founded. His evidence did not rightly commend itself to the learned Judge, because there was no mention in the petition that any distribution of pamphlets took place at Periathachoor.

Regarding P.Ws. 1 and 2, we agree with the learned Judge that their evidence is not of any use, because they were not mentioned in Schedule B as witnesses to this point.

P.Ws. 10, 11 and 12 are witnesses who are mentioned in Schedule A. According to P.W. 10 about a week prior to the polling date, he saw the first respondent in the company of B. M. Swami distributing these pamphlets the village of Nedi. On his own admission, this witnesses worked for the appellant without any remuneration being paid to him. That by itself is sufficient to show that he is interested in supporting the case of the appellant.

P.W. 13 is a teacher in a District Board School at Narlyur. His evidence is that he attended a meeting addressed by one M. G. Ramachandran at Valavanoor, 10 days prior to the polling date. The first respondent is said to have been sitting on the platform put up for this meeting and reading a pamphlet similar to Ex-A1. At the end of the meeting, a number of boys distributed such pamphlets. P.W. 13 further says that the first respondent himself from the platform distributed some pamphlets to the villagers standing near the platform. Of course, this circumstance has not been adverted to by the learned Judge. R.W. 7 was examined on the side of the first respondent as one of the persons who attended this meeting; and, according to him, the first respondent did not distribute any pamphlets at the end of the meeting. He even asserted that no pamphlets were distributed at all by any one at that meeting. R.W. 7 is a man owning properties worth Rs. 20,000. It was suggested to him that he was a member of the C.R.C. party and that he also worked for the first respondent, but both these suggestions were denied by him. Valavanoor is not one of the places mentioned either in the petition or in the schedules to the petition as the place where any corrupt practice took place. According to the evidence of P.W. 13, he met the appellant in his house 10 days after the election and told him about the Valavanoor meeting and the distribution of pamphlets at that meeting. The petitioner himself admitted in his cross-examination that, except P.W. 5, he had met all other witnesses examined by him before he filed the election petition. He further admitted that he had ascertained from these witnesses the details of what was spoken by the first respondent during his election propaganda and about the places to which the first respondent went, accompanied by B. M. Swami or other persons. Having regard to this admission, it is difficult to place any reliance upon the evidence of P.W. 13 when neither the incident at Valavanoor nor P.W. 13 being a witness

for it, finds place in the body of the petition. We therefore agree with the learned Judge in his conclusion that it would not be safe to rely on the evidence of this witness.

We have already indicated in discussing the evidence relating to the first point about the oral representations alleged to have been made by the first respondent why the evidence of P.W. 12 could not be accepted. For the same reasons we agree with the learned Judge that this witness could not be relied upon equally when he speaks to the distribution of pamphlets by the first respondent in Chinnambaboo Samudram village. Similarly, the evidence of P.W. 14 also who speaks about the distribution of such pamphlets by the first respondent in Chendur village has been rejected by the learned Judge. In the case of this witness also, we have concurred with the learned Judge on the first point. For the same reasons, we are not prepared to differ from the learned Judge about the evidence of this witness relating to distribution of pamphlets in Chendur village.

The most important witness put forward by the appellant regarding distribution of pamphlets is P.W. 1. He is an advocate of 30 years' standing, practising at Tindivanam, and he was a member of the Madras Legislative Assembly for a term of five years before 1957. His evidence was that, four or five days prior to the election date, the petitioner showed him a pamphlet like Ex.A1, and then he (P.W. 1) advised him not to do any counter propaganda. After the elections, when the petitioner appellants met this witness, he (P.W. 1) told him that he had seen the first respondent and his party men distributing pamphlets like Ex.A1 at Grandhipuram in Tindivanam. According to his evidence at the time when this distribution took place, one Vadivelu Gounder asked him whether the witness himself was responsible for the pamphlets, and he denied it. Among the numerous signatories to the pamphlets, we find the name of one R. Gopala Gounder of Tindivanam. P.W. 1's name is V. Gopala Gounder. Of course, he is said to be a prominent figure in Tindivanam and that the name "Gopalan Gounder" without any initials would indicate in the public mind this witness alone. It is possible that R. Gopala Gounder's name was introduced in the pamphlet as a clever device to make it appear that P.W. 1 was one of the signatories to it. Vadivelu has not been examined. P.W. 1 himself was not mentioned in the petition as a witness to the distribution of pamphlets. Certainly the petitioner could not have forgotten such a prominent figure as P.W. 1 when he drafted the petition and gave particulars of distribution on pamphlets and more so when he was particular in mentioning the name of one B. M. Swamy as the person responsible for such distribution. This circumstance alone is sufficient to discredit the evidence of P.W. 1. The learned Judge has given a number of reasons which plainly go to show that P.W. 1 is interested in the petitioner-appellant. When the latter was examined as a witness in an election petition filed by P.W. 1 before the Election Tribunal at Vellore, he was questioned on the point of the present P.W. 1 being his witness in this election petition. The appellant then stated that he was proposing to examine P.W. 1 in his election petition only for proving the receipt of a notice like Ex. A1, by post. Obviously, if the appellant knew on the date of his examination before the Election Tribunal at Vellore that P.W. 1 had witnessed the distribution of these pamphlets at Grandhipuram four or five days prior to the date of poll, he could not have forgotten this when he was questioned about it before the Election Tribunal at Vellore. We therefore agree with the learned Judge that the examination of P.W. 1 on this point is only an after-thought. P.Ws. 1, 2, 6 and 8 admittedly received pamphlets similar to Ex.A1, by post. But, in the absence of any evidence to show that such distribution took place at the instance of the first respondent or his agents, no detailed discussion of their evidence is called for.

To sum up, quoting the words of the learned Judge, "It is quite evident that some person who was inimically disposed towards the petitioner had been responsible for printing and publishing it, though not in the manner stated by the petitioner and his witnesses." Our view of the evidence justifies our concurrence with the learned Judge in this view. We also agree with him that, though the pamphlets were directed against the petitioner, it has not been made out that they were caused to be printed or published by the first respondent or by any of his agents or by any one else with the consent or connivance of the first respondent. We are also of opinion that the distribution of these pamphlets on the eve of the polling date, which fact however seems to be well established by the evidence, is not shown to have been done either by the first respondent or by his agents or by others with the connivance of the first respondent.

The result is that we fully concur with the learned Judge that the petitions-appellant failed to substantiate the two charges which he formulated in his petition to impugn the election of the first respondent. Accordingly, the appeal fails and is dismissed.

The appellant will pay the costs of the first respondent in this appeal. Counsel's fee Rs. 250.

(Sd.) D. DESIKAN,
Assistant Registrar, A.S.
[No. 82/92/57/9338.]

By Order,
DIN DAYAL, Under Secy.